

Panaji, 24th April, 1989 (Vaisakha 4, 1911)

SERIES II No. 3

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Department of Labour

Order

No. 28/2/88-ILD.

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 17th October, 1988.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/10/76

Shri Shamsunder B. Diukar — Workman/Party I
V/s

M/s. Arpora Nagoa V.K.S.S. — Employer/Party II
Society Ltd.

Workman represented by Adv. Guru Shirodkar.

Employer represented by Shri Jose D'Souza, Chairman
of the Society.

Panaji, dated: 21-9-1988

A W A R D

This is a reference made by the Government of Goa, Daman and Diu by its order No. IRM/CON/(213)/75/IT-5-76 dated 8th June, 1976 with an annexure scheduled thereto which reads as follows:

"Whether the action of the management of M/s. Arpora Nagoa, V.K.S.S. Society Limited, Arpora, Bardez, Goa in terminating the services of Shri Shamsunder B. Diukar, Secretary, with effect from 30-11-1975, was legal and justified?

If not, what relief the concerned workman is entitled to?"

After the receipt of the above reference on 6th June, 1976 the matter was registered and parties who were duly served

with notices and appeared in the matter and filed their respective statements. The workman filed his claim statement on 24-2-1977, followed by the written statement of the Society dated 11th April, 1977, which was actually filed in the Court on 15-4-1977, but the roznama showing that it was filed on 25-4-1977. Whatever that may be, there is the written statement. It seems that no rejoinder was filed nor issues besides the Govt. reference were framed. The Govt. reference is clear and specific regarding the termination of the workman and this tribunal has to find out whether the termination is just and legal in the circumstances of the case. Thereafter the parties went on trial.

In the meantime the Presiding Officer Shri Kollali retired and Shri Coelho took over on or after 12-7-1979. It is seen from the roznama that the labour professionals had boycotted some proceeding since 8-9-1980 and matter was on sine-die list. The succeeding judge Shri Noronha took over on or before 15-4-1981 and the recording of evidence took place before him. The evidence of Party I workman was recorded on 8-7-1981 and his cross examination took place on 4-12-1981. It is not quite clear from the roznama why no evidence for Party II was recorded. Anyway after the evidence of Party was recorded the matter was argued over and Party I filed written arguments on 11-1-1982. Party II had filed written arguments earlier on 18-12-1981. Thus the matter was posted for award and the roznama is silent from 11-1-1982.

However we find a clue from the cases which shows that my predecessor convinced the parties that this was an accounts matter and appointment of an expert as commissioner was necessary. Accordingly both the parties filed a joint application before my predecessor on 21st December, 1983 requesting for appointing a commissioner.

Accordingly Shri A. V. Kamat, chartered accountant was appointed commissioner and his report dated 10th April, 1984 is on record. To this the parties filed their say on the report. As Shri Noronha did not know Marathi and Account Book Ex. 9 is in Marathi he asked party to file its English translation. The translation was filed on 18-4-1985. Since then the roznama is silent.

After I took over, the parties were called and oral arguments were heard on 14-7-1988. Now I am to go through the record and write the judgement. I here summarized the things in the foregoing paragraphs. I shall now recapitulate the facts and evidence to know the points of issue in relation to the Govt. reference under which this tribunal has to say, whether the action of the management of Party II society in terminating the service of its accountant, Party I is just and legal. Party I by name Shamsunder B. Diukar joined the service of the society as Secretary-cum-Accountant on 16-8-1973 at a salary of Rs. 125/- per month. While he was so in service he was sent on deputation at the training centre at Karaujoli and he was under training between 18-8-1975 to 20-11-1975. While he was under training the society management had held a meeting on 23-11-1975

where in it was resolved that the services of Party I workman be terminated w.e.f. 30-11-1975. Thereafter the workman raised an Industrial dispute which gave rise to this Govt. reference. The workman claims that the unilateral action of the management amounts to retrenchment and he claims reinstatement with full back wages. This is the simple case made out by the workman. The question is whether the facts are so simple as is made to believe and whether the management has grounds to justify its action.

The management through its present Chairman Jose D'Souza has come forward with a positive case that Party I working as a secretary and who was whole and sole in the matter of the society had betrayed the management by indulging in several acts of falsification of accounts, misappropriation of goods and money and causing material loss to the society. According to the society the Party I worked in the society in two different capacities. Party I initially worked as accountant and wrote society accounts between 1-7-1973 to 30-6-1974. Thereafter as Secretary he wrote accounts between 1-7-1974 to 30-6-1975. For the first period the audit report showed that there was misappropriation of the society funds. So also for the second period between 1-7-1974 to 30-6-1975 the audit report showed different items of misappropriation. These two reports were sent to the Chief Auditor for confirmation. The Chief Auditor by his letter dated 15-11-1975 confirmed 10 items of misappropriations which were pointed out by the auditor. This letter dated 15-11-1975 is at Ex. 8 in the case papers.

Immediately after receiving the letter of the Chief Auditor which was received while Part I was undergoing training at Karaujoili the society called the meeting of the Executive body on 23-11-1975 wherein it was unanimously resolved that services of Party I should be terminated because he had betrayed the confidence of the society which was reposed in him. Hence after the training period of Party I was over, he was not allowed to join but his services were terminated with effect from 30-11-1975. The Chairman D'Souza who has forcefully argued the case before me on behalf of the society submitted that the society had acted in time. Party I would have brought the society to Bankruptcy. Hence he claims that the Society did not rest by just passing the resolution but it approached the Registrar of Society for approval of the proposed action. The registrar went through the record and okayed the action of society. By citing this, he submitted that there was the question of the survival of the society and the only remedy was to get rid of the Secretary who was responsible for several acts of misappropriation. According to him the society never wanted to send the Secretary for training. The Secretary Party I managed to get the sanction for deputation to training through the Office of the Registrar. Hence he has come forward with a positive case that the society had lost confidence in the workman and the action in terminating his service is justifiable and is according to law. This is his answer to the Govt. reference and I shall go through the rival contentions to understand the correct position.

I think that my predecessor felt that there were two audit reports on the file pointing an accusing finger towards the workman and this was a matter pertaining to accounts. Hence he thought it fit and proper to have the assessment of the reports and accounts through appropriate expert agency. This is how Shri A. V. Kamat the Chartered Accountant came to be appointed as a Court Commissioner. His report dated 10th April is on record. This is the report of an impartial expert agency and the findings have high evidentiary value. I find from the record that there is the deposition of the witness Jose Caetano D'Souza dated 8-7-1980 on record. I find that the roznama dated 8-7-1980 simply says "Cross Examination concluded" but does not say whose evidence it was! Anyway the evidence of the witness is there. I shall consider this along with the report of the Chartered Accountant to find out the truth in the matter, so far as the allegations regarding misappropriation are concerned.

The witness Jose Caetano D'Souza says that the audit for 1973-74 was done twice, once by Junior Auditor and second time by Senior Auditor. With reference to Senior Auditor's report Exb. E-8 he says that the Auditor found out short sales for the period between 1st July, 1974 to November, 1974. The accounting year is from 1st July to 30th June. The audit for 1-7-1974 to 30-6-1975 was completed on 30th July, 1975. In the audit it was found that the short fall by the end of 1973 was Rs. 322.18. A short fall of Rs. 150.90 was disclosed. So also there was controversy about Rs. 200/-. In Cross Examination he states that the short sales for a period of about six months shows that there was deliberate misappropriation of funds or misutilisa-

tion of funds of the society. It is suggested to him that there are two rival groups in the society as well as in the Managing Committee. He has no knowledge about it. He however states that before terminating the services of the workman a meeting of the managing body took place and before that the managing body had held a verbal enquiry.

I found from the evidence of this witness that his statement is rather lukeworm and he does not appear to be coming out with the full truth. I think my predecessor also formed the same opinion and as such he decided to get an expert-report and I find that the report of Shri Kamat the Chartered Accountant goes a long way. In his report dated 10-4-1984 (received and filed on 13-4-1984) he points out the following discrepancies.

i) About the doubtful entry of Rs. 200/- 8-8-73 he noticed that cash book entries revealed one figure while the sales register revealed alterations to those figures which were recorded in cash book.

ii) A sum of Rs. 563/- was altered to read Rs. 463/- and another sum of Rs. 911/- was altered to read Rs. 811/-. This shows an amount of Rs. 200/- was less in the cash book. According to Shri Kamat the entries in the cash book are correct. Therefore these alterations are not genuine. According to him the entry regarding the sales difference of Rs. 200/- recorded on 9-11-1973 on page 19 of the cash book [Exb. E(a)] is dubious and is intended to justify the wrong alterations dated 8-8-1973 in the register.

iii) He confirms that on 8-1-1974 the days sales should actually have been Rs. 845.25 as per entry No. 940 in the sales register. However actually in the cash book the sales are shown at Rs. 245.25. This is how a sum of Rs. 600/- has gone in to oblivion.

iv) The difference of Rs. 200/- + Rs. 600/- = Rs. 800/- as seen from above was attempted to be concealed. In the cash book at page 53 entries are made to show that those two amounts are received. However this entry in the cash book does not tally with the physical count of cash taken on 16-6-1974. The cash in hand was found to be just Rs. 1947.48, while there ought to have been a cash of Rs. 2634.01. This is how there was a short-fall of Rs. 686.53. In order to account for this amount an entry is made in the cash book of page 56 with the entry "Rs. 686.53 with Chairman Joseph Fernandez". In the opinion of the Chartered Accountant, this much amount is due to the society and is recoverable.

v) There is dubious entry about payment of Rs. 200/- to Joseph Fernandez on 15-4-1974. It was actually made on 13-5-1974. This is supported by the entry in the pass book and banks certificates dated 30-7-1976. Therefore the entry dated 15-4-1974 debiting Rs. 200/- in the name of the Chairman is false.

vi) There is then a dubious entry in the receipt side of cash book showing Rs. 200/- on 8-2-1974 as "Amanat". How this amount of Rs. 200/- was received and paid into bank when the position on the earlier day showed cash balance of Rs. 39.08? According to the Chartered Accountant this entry is fishy as this amount does not belong to the society.

vii) There is confusion about Rs. 100.68 in the purchase dated 21-2-1973.

viii) Confusion about Rs. 85.28.

ix) Sales differences dated 17-9-1974. Actual sales do amount to Rs. 1105.36 of 674 Kgs. at the rate of Rs. 1.64 per Kg. Sales register however shows sales 500 Kg. and sale proceeds Rs. 945.46. This is how sales of 97.500 Kg. for a sum of Rs. 159.90 are omitted from the record.

After giving all the above details the C A has opined that an amount of Rs. 1037.43 is recoverable from the person who was responsible for the accounts. The workman in his evidence recorded on 8-7-81 states in Examination in Chief itself that audit report for 74-75 showed a short fall of Rs. 322 "which he paid subsequently". According to him the maximum short fall for a month used to be Rs. 25/- and that too because of mistaken calculation. About the entry of Rs. 200/- dated 9th November 1973 when questioned in the cross examination he wants to place the blame on one Hiraker Naik. Above the shortage in sales register dated

8-1-74 amounting to Rs. 600/- (Actual sales Rs. 845-25 but book showing Rs. 245.25) he states that he was on training and Gurudas Narvekar knows about it.

I have cursorily gone through the above facts to know the conduct of the workman and to know whether this is really a case of loss of confidence and how for the Society was justified in taking the drastic action of removing the workman from service by not allowing him to rejoin after the training was over. A few days before the training was to be over the chief auditor had confirmed the findings in the audit report showing the secretary as responsible for the short fall in the cash. Consequently the managing body hurriedly called a meeting three days before the Secretary was to resume and passed a resolution saying that the society had lost confidence in the workman secretary (The word used by society is betrayal) and so the society discontinued him from service by the end of the month and of course not taking any criminal action against him for misappropriation.

The Industrial Disputes (Amendment) Act, 1971 inserted Section 11A in I.D.A. 1947 by investing Industrial Tribunal with wide powers over Industrial disputes. As per the amended provision the Tribunal may set aside the order of discharge or dismissed if it finds that the order of discharge or dismissal was not justified. On the showing of the Secretary workman himself he was in full control of the assets and management of the society, there were some short falls though not all those shown in the audit report. We are not here to consider the audit report to see whether the charge of misappropriation will stand in a criminal Court. We have just to see whether the action of the management is justifiable in the circumstances of the case. Upon a careful considerations of the facts and evidence on record, I feel that an irresistible conclusion can be drawn to hold that the society had lost confidence in the workman and so it issued the order of termination without taking any action. Be it noted here pertinently that even as per the chartered accountant Kamat the amount of Rs. 1037.43 is still due to the society from the person who wrote the accounts. While considering these facts these tribunal has to see whether this is really a case of victimization as adumbrated on behalf of the workman. I do not find any circumstances showing that the society has any time acted in a high-handed manner to make the secretary a scape goat by letting out some body free! Shri D'Souza the present chairman of the society in his scathing attack on the workman avers that the workman in whom the society reposed full confidence has practised fraud on the society by writing false accounts and by misappropriating different sums of money and consumer items kept for sale in the society. According to him the auditor took a surprise check of the Society shop on 10-6-74 and a shortage of Rs. 686.53 was found. This amount is still recoverable. According to him in all there were 15 instances of misappropriation and due to them the society was constrained to take the drastic action. He has bemoaned that the misappropriated funds of the society are still recoverable but it has come to the lot of the society to make repeated trips to the court for the last 10 years by spending a lot of money for travelling etc.

While controverting the claim of the society it is stated on behalf of the workman that he is made to suffer due to rival groups in the society. It is further asks why no police case was filed when there were instances of huge misappropriation? It is true that this being cognizable offence the matter could have been reported to police: However, simply because no police case was filed the perpetrator of crime cannot be taken as innocent if there are circumstances which point an accusing finger towards him. It is not shown how one particular faction was poised against the Secretary and who was the person who is being protected, if the misappropriation is a proven fact? There is nothing to show this!

I am considering the above factors to see whether this is really a case of loss of confidence? Victimization if any, must be directly connected with the activities of the delinquent workman inevitably leading to the penal action without necessary proof of a valid charge against him. Prime facie there is a proof against the delinquent and the report of the chartered accountant has put a last seal on it. As observed in this leading division bench cases reporter in

a) 1967 II LL. J. P. 184 (Patna) also page 193.

b) 1974 Lab. I. C. 25 (Rajasthan).

"It is therefore manifest that if actual fault or guilt meriting the punishment is established, such action will rid the taint of victimization. In other words, if it is found that the employee is guilty of gross misconduct then, there can be no question of victimization because such gross misconduct merits dismissed by itself."

The above observations of the Division Benches of the two High Courts do apply aptly to the facts of this case. It is convincingly brought forth by documentary evidence for which the workman himself was responsible that there was gross misconduct in practising fraud both in money and material and in these circumstances the extreme penalty cannot called to be disproportionate to the act of misconduct. I am therefore inclined to hold that the order of dismissal is just and proper and I answer the govt. reference accordingly and pass the following order.

ORDER

It is hereby held that the action of the management of M/s Arpora Nagoa V. K. S. S. Society Limited, Arpora Bardez Goa in terminating the services of Shri Shamsunder B. Diukar secretary w.e.f. 30-11-1975 is just and legal and the same does not call for any interference.

Consequently the workman is not entitled to any relief in this Govt. reference which is answered as above. Inform the Govt. accordingly.

In the circumstances of the case the parties do bear their own costs.

Sd/-

(S. V. NEVAGI)
Presiding Officer
Industrial Tribunal.

Order

No. 28/2/88-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 3rd March, 1989.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref No. IT/10/85

Workmen

V/s

M/s Lion Candle Factory

Workmen represented by Adv. A. Nigalye.

Employer represented by Adv. G. K. Sardessai.

Panaji, Dated 31-1-1989

AWARD

This is a matter wherein the Govt. made a reference u/s 10 of I.D.A., 1947 in respect of the Charter of Demands raised by the Union regarding the revision of Wage structure etc. The details of the charter of demands are given in the schedule appended to the Govt. reference dated April 18 1985.

After the registration of the reference and issuance of notices to the parties the pleadings were filed in the case and my Predecessor by his order dated 11-10-85 held that no other issues besides the govt. reference arose in matter and the reference as regards the charter of demands be heard on merits. Since then the matter is pending for disposal according to law.

Now, the Union and the Employer have arrived at an settlement and the settlement signed by the parties yesterday the 30th instant is presented before me today and I am here-with passing the award as per the terms of the settlement.

ORDER

The Union representing the workmen has agreed not to press the Charter of Demands raised by them on 3-9-83. Consequently, the management has agreed to continue the existing wage structure for a period of 3 years from today. It is therefore held and declared that the existing wage structures of the employees of Party II M/s Lion Candle Factory, Borda, Margao, Salcete Goa, shall continue for a period of 3 years from today.

The management of Party II shall pay to the workmen the amounts as mentioned below:

1. Mr. Rosario Gomes	Rs. 2,000
2. Mr. Hanumant Borkar	Rs. 2,000
3. Mrs. Filomena Gomes	Rs. 1,600
4. Miss Roshan Revonkar	Rs. 1,600

The above amount is payable to the workmen as consolidated amount as per term A of the settlement.

In view of the above settlement it is hoped that the workmen and the union would maintain harmonious industrial relations and would co-operate with the management in ensuring productivity.

There shall be no order as to costs. Inform the Govt. accordingly about the passing of the award.

S. V. Nevagi
Presiding Officer,
Industrial Tribunal.